IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

MACA.No. 1225 of 2006()

OPMV.1513/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/PETITIONER:

GOPINATHA KAIMAL,
S/O.GOPALAN KARTHA,
DHANYA VEETTIL, ARIYALUR VILLAGE,
MALAPPURAM DISTRICT.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS: RESPONDENTS:
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1. VIJU DAVIS, S/O.DAVIS,
KONIKKARA HOUSE, ATTORE.

2. ALICE JOSE,
OLEKKENGIL HOUSE,
P.O.AYYANTHOLE, THRISSUR.

3. THE ORIENTAL INSURANCE CO.LTD.,
2ND FLOOR, T.D.BUILDING, POST BAG NO.158,
ROUND WEST THRISSUR.

4. P.V.JOSE, S/O.ANTONY,
POOVATHINKAL HOUSE, P.O.VETTUKAD, PUTHUR,
THRISUR. (DELETED)

THE NAME OF 4TH RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DATED 20.2.2007 IN I.A.360/2007.

5. K.R.THOMACHAN,
KANJIRATHINKAL HOUSE, KHANNA NAGAR,
KORATTY, THRISSUR.

6. KERALA STATE INSURANCE DEPARTMENT,
REP. BY DISTRICT INSURANCE OFFICER,
P.O.AYYANTHOLE.

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW FOR R6
ADV. SRI.VPK.PANICKER FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.1225 OF 2006 (A)

Dated this the 12th day of June, 2007

J U D G M E N T

KOSHY,J.

A L.P. School Head master met with a motor accident due to the negligence of the drivers of the vehicles insured by 3rd and 6th respondents and he suffered serious injuries which resulted finally in the amputation of his right upper limb at shoulder level and various other complications. He claimed Rs.4,00,000/- as compensation. Tribunal awarded only a total compensation of Rs.2,16,000/-. Only quantum of compensation is disputed herein as tribunal found that accident occurred as alleged and directed the compensation awarded to be deposited by 3rd and 6th respondents in equal shares. He was in the hospital for long time. Ext.A35 is the wound certificate. Ext.A30 is another disability certificate issued by a Plastic Surgeon and he certified that the petitioner has temporary disability of 100% for six months and permanent disability of

60% due to amputation of the right upper limb. Ext.A31 certificate shows that his entire right hand was amputated. Ext.A36 is the disability certificate issued by the Medical Board reporting 60% permanent disability. Tribunal has taken only 50% disability. But the Medical Board certified that there is 60% disability and when there is amputation of right hand apart from the fracture 1, 2, 3, 4 and 5 ribs, we are of the opinion that tribunal was not justified in reducing the percentage of disability even though contentions of the appellant that in view of the serious disability he cannot work as a teacher any more and 100% disability cannot be granted. It is also submitted that Ext.A39 certificate shows that his last drawn salary was above Rs.10,000/-. Basic salary was Rs.7,550/- plus D.A. and he was getting allowance like H.R.A. Ext.A40 certificate shows that he was serving as State Counsel Member of Motor Accident Prevention Society and he was doing a number of other social activities. Accident occurred after completing the age of 54. Accident occurred on 19.4.2000. He completed the age of 55 on 30.4.2000. Since he retired immediately after the incident at the age of 55, we are of the opinion that contention that compensation should be calculated taking the multiplier of the salary he was receiving, that is,

more than Rs.10,000/- cannot be accepted. But according to him, after retirement he was offered a job of Rs.5,000/- in a private school as at the age of 55 it is premature for a retired life and even otherwise as a head master he can take private tuitions and can earn something. Accident occurred in 2000 and we are of the view that at least Rs.3,000/- ought have been assessed as notional income after the age of 55 as against Rs.10,000/- claimed by the petitioner and Rs.2000/- assessed by the tribunal. It is submitted that before completing the age of 55, accident occurred. Tribunal has taken 10 as the multiplier. Under second schedule, for the group of motor accident victim between the age of 45 and 50, multiplier is 13 and between 50 and 55 it is 11. But second schedule need be taken only for guidance when compensation is calculated under Section 166. Hence multiplier of 10 taken by the tribunal is not interfered and if that is so, the compensation payable for permanent disability will be 3000 x 12 x $^{60}/_{100}$ x 10 = Rs.2,16,000/-. Tribunal has awarded disability compensation amounting to Rs.1,20,000/-. So the balance compensation payable on this account comes to Rs.96,000/-. It is contented that even though five ribs were fractured and one hand was amputated only Rs.12,000/- was granted for pain and

sufferings and for six months he was having 100% disability and his wife was attending him and the amount awarded for attendant expenses and hospital expenses etc. are very meager and only for actual reimbursement of medical bills were granted. It was argued that enhancement of compensation is necessary in all the heads of claims. We are of the opinion considering the total amount granted, no further enhancement is needed. Therefore the above Rs.96,000/- should be deposited by 3rd and 6th respondents in equal proportions within three months from the date of receipt of copy of this judgment with 7% interest from the date of application till deposit. Considering the age of the appellant, on deposit of compensation he is allowed to withdraw the same. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

8th June, 2007